

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-O-18157-LMA
)	
KAY del CARMEN HOLLEY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 87549,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Kay del Carmen Holley (respondent) was charged with failing to comply with probation conditions imposed pursuant to a Supreme Court order. She failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on October 23, 1979, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 28, 2013, the State Bar filed and properly served the NDC in this matter on respondent by certified mail, return receipt requested, at her membership records address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was returned to the State Bar and was signed by James Holley.³ A courtesy copy of the NDC was served on respondent by regular mail at her membership records address. The NDC served by regular mail was not returned to the State Bar by the U.S. Postal Service.

Thereafter, the State Bar attempted to contact respondent by telephone at her membership records telephone number and sent an email to respondent's private email provided to the State Bar for State Bar purposes.⁴

Nevertheless, respondent failed to file a response to the NDC. On April 30, 2013, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, at her membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to

³ See the State Bar's petition for disbarment, page 2, line 5.

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. The return receipt for the motion was signed by Kay Holley.⁵ Respondent did not file a response to the motion, and her default was entered on May 16, 2013. The order entering the default was filed and properly served on respondent at her membership records address by certified mail, return receipt requested. The order served on respondent was returned to the State Bar Court by the United States Postal Service as “REFUSED” and “UNABLE TO FORWARD.” The court also ordered respondent’s involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On November 22, 2013, the State Bar filed and properly served the petition for disbarment on respondent by regular mail and by certified mail, return receipt requested, at respondent’s membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since her default was entered and the default order was served on May 16, 2013; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent’s conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on December 18, 2013.

⁵ See the State Bar’s petition for disbarment, page 3, line 3.

Respondent has two prior records of discipline.⁶ Pursuant to an order of the State Bar Court filed on February 9, 2010, respondent was publicly reprovved with conditions for failing to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services and for failing to maintain her current office address on the official membership records of the State Bar. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on September 9, 2011, respondent was suspended from the practice of law for one year, the execution of which was stayed, and she was placed on probation for one year subject to conditions. Respondent stipulated in this matter to her failure to comply with certain conditions attached to her prior public reprovall.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-O-18157 (Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with specified probation conditions imposed by the Supreme Court in its September 9, 2011, Order.

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⁶ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the State Bar (a) filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address; (b) served a courtesy copy of the NDC on respondent by regular mail at her membership records address; (c) telephoned respondent at her membership records telephone number; and (d) attempted to reach respondent at her private email address for State Bar purposes;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Kay del Carmen Holley be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Kay del Carmen Holley, State Bar number 87549, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: January ____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court